

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 458 of 1978

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ABHESINH ARJANSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR VC DESAI for Petitioner

MS KATHABEN GAJJAR, LD. AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 22/04/96

ORAL JUDGEMENT

The plaintiff filed Regular Civil Suit No. 268 of 1973 before the learned Joint Civil Judge (S.D.) Mehsana for recovering house rent allowance from the defendant - State of Gujarat for the period from 19/9/1968 to 19/11/1969 (14 months) at the rate of Rs.51/- p.m. making up a claim of Rs. 714/-, with running interest at the

rate of 9% p.a. from the date of suit till realisation and cost of the suit.

2. The plaintiff's case was that while serving as PSI, CID at Mehsana he had occupied a rented premises from 19/9/1968 to 25/10/1970 and was paying Rs.51/- per month as rent to the landlord. No Government quarter was available to him and a non-availability certificate (exh.25) was issued by the Deputy Engineer (R & B), Mehsana in his favour. As the plaintiff was entitled to rent free accommodation, he applied for house rent allowance as per exh. 24 dated 14/2/1970 to I.G.P., C.I.D., Ahmedabad (competent authority) and by order dated 25/1/1972 he was granted HRA at the rate of Rs.51/- per month from 20/11/1969 to 25/10/1970 only instead of for the whole period from 19/10/1968 to 25/10/1970. The plaintiff, therefore, claimed the remaining H.R.A. representing the period as stated above. As per order exh. 22 the H.R.A. was not sanctioned on the ground that the plaintiff has not furnished satisfactory reasons for the delay caused in applying for getting H.R.A. Hence, after serving notice u/S. 80 of the Code of the Civil Procedure, the plaintiff filed the suit as aforesaid.

3. The defendant - State of Gujarat contended as per written statement exh. 12 that the suit was not within time, that the Court did not have jurisdiction to hear it, that the notice was not legal and proper, that the plaintiff did not apply for H.R.A. immediately on resumption of duty, but had done so at a belated point of time, that there was a delay of one year 4 months and 27 days in applying for the same and that the suit should be dismissed with cost.

4. The learned trial Judge by his judgment and order dated 9/7/1976 dismissed the plaintiff's suit with cost holding that the plaintiff's suit was within time, that the suit notice was legal and valid, that he occupied a rented house at Mehsana during the period in question on account of non-availability of Government quarter, that the Court had jurisdiction to hear the suit, but that he had preferred the claim for the H.R.A. at a belated point of time and that, therefore, he was not entitled to the claim in the suit. The relevant discussion on issue no.4 may be noted from para. 11 of the judgment of the trial Court. Accordingly the plaintiff had taken over as P.S.I., C.I.D., Mehsana on 18/9/1968 and served there upto 25/10/1970. For obtaining non-availability certificate he made application to the Deputy Engineer (R. & B.), Mehsana on 20/11/1969. The learned trial

Judge therefore, found that the plaintiff had made application for H.R.A. after a passage of one year and two months and, therefore, his claim was a belated claim. The learned trial Judge held that the plaintiff failed to submit satisfactory explanation for delay caused in obtaining non-availability certificate exh. 25, and also in applying for H.R.A. vide exh. 24 dated 14/2/1970. Reference in this regard was made to Rule 151 (b) Note (3) of the Bombay Treasury Rules, 1960 which requires the competent authority to forthwith reject claims for which delayed application has been made and for which adequate explanation has not been given. The learned trial Judge therefore, came to the conclusion that the competent authority rightly accepted the plaintiff's claim as per order exh. 22 dated 12/4/1972. On going through the plaintiff's application exh. 24 the learned trial Judge found that the plaintiff had not at all assigned any reasons for delay with the result that the application was returned with an endorsement that the plaintiff should furnish the explanation. The plaintiff, however, failed to furnish any adequate or satisfactory explanation and instead returned the application exh. 24 with some endorsement, which according to the learned Judge, did not contain any adequate explanation for the delay.

5. The plaintiff carried the matter in Regular Civil Appeal No. 128 of 1976. The learned Extra Assistant Judge, Mehsana, who heard the appeal, by his judgment and order dated 11/7/1978 dismissed the appeal with no order as to cost holding that the plaintiff failed to prove that he was entitled to recover Rs.714/- towards the H.R.A. for the period from 19/9/1968 to 19/11/1969 and that the trial Court did not commit error in dismissing the plaintiff's suit. The learned appellate Judge made reference to the aforesaid Rule of the Treasury Rules. Concurring with the reasoning given by the learned trial Judge the learned appellate Judge held that the plaintiff had failed to give any adequate explanation for making delayed application. The learned appellate Judge has referred to the aforesaid Treasury Rules. The observation of the learned appellate Judge may be reproduced :-

"When a Government has to draw the money from the Government account, then the such can be drawn as provided in Chapter I of the Bombay Treasury Rules, 1960. He has to present a bill for his claim to withdraw amount from the Government account and the said bill is required to be sanctioned by the head of the Department or the

competent authority. Now Rule 158(b) of the aforesaid Rules provide that the claims of the Government servants, whether Gazetted or not, to arrears of pay or allowance or to increments which have been allowed to remain in abeyance for a period exceeding one year cannot be investigated by the Accountant General except under the said order of the competent authority. Now the provision of Note 1 given under the aforesaid Rule states that the delays in payment are opposed to all rules and are highly inconvenient and objectionable and when no satisfactorily explained should be brought to the notice of the head of the Department concerned."

6. Referring to Note 2 under the Rules it has been observed by the learned appellate Judge that the period of one year should be counted from the date from which a claim became due, to that investigation of the application from the Accountant General's office (is to be made). Nothing has been observed from this Note no.2 by the learned appellate Judge. However, on a reference to Note 3, which is found to be relevant, it has been observed that this note provides for rejection of all claims forthwith if such claims have remained in abeyance for a period exceeding one year and for which adequate explanation has not been forthcoming.

7. This Second Appeal has been directed against the aforesaid judgments and orders of dismissal of the plaintiff's suit.

8. Following questions of law are set out to have been involved in this Second Appeal :-

- (1) Having found that appellant has paid rent at the rate of Rs.51/- per month for the period from 19/9/1968 to 25/10/1970 and having found that Government quarter was not available during that period, whether courts below have erred in not decreeing appellant's suit ?
- (2) Is the order of the Competent Authority rejecting appellant's claim of H.R.A. from 19/9/68 to 19/11/69 on the ground that there is delay in making claim which is not explained by appellant, is arbitrary, against principles of natural justice, in as much as no opportunity has been given to appellant to have his say for such alleged delay?

(3) Whether Courts below have misread and misconstrued Rule 259 (3) and (60 of Chapter-I of Bombay Police Manual and Note-3 of Rule 151 (b) contained in Volume-I of Bombay Treasury Rules, 1960?

(4) Having regard to the facts and circumstances of this case whether courts below have erred in dismissing suit of appellant ?

9. This second appeal having been placed for final hearing before this Court Mr. V.C. Desai, learned counsel appearing for the appellant has pressed into service following questions of law :-

(1) Having found that appellant has paid rent at the rate of Rs.51/- per month for the period from 19/9/68 to 25/10/70 and having found that Government quarter was not available during that period, whether courts below have erred in not decreeing appellant's suit ?

(2) Whether Courts below have misread and misconstrued Rule 151(b) contained in Volume-I of Bombay Treasury Rules, 1960 alongwith its Notes ?

Rest of the substantial questions of law formulated at the time of admission are not canvassed by the learned counsel for the appellant.

10. I have heard the learned counsel for the appellant as well as learned AGP appearing on behalf of respondent-State on the aforesaid limited questions of law. I am of the opinion that there is an apperrant error on the face of the record and on the face of reading of the Rule, committed by the Courts below. The reading of the Rule is not in dispute.

11. The Rules as they were applicable at the relevant point of time have been referred to in the judgments of the Courts below and there is no dispute with regard to the reading of the Rules. The controversy centres round the applicability of the particular Note. It is not in dispute that the claim for H.R.A. commencing from 19/9/1968 was preferred by application dated 14/2/1970. Therefore, it is the submission of the learned counsel for the appellant that the plaintiff should have been awarded H.R.A. atleast from 13/2/1969 to 19/11/1969. The claim which the Competent Authority sanctioned was

from 20/11/1969 to 25/10/1970. Hence, the submission is that the claim of H.R.A. from 13/2/1969 to 19/11/1969 for a period of about 9 months ought to have been entertained and granted, as atleast that claim was not barred by the delay spoken to in the relevant Note. Note 2 clearly speaks about the period of one year to be counted from the date on which the claim became due, on which the investigation by the Accountant General is sought (that is to say the date of receipt of the application). On going through the judgments of the Courts below I find that no attention has been focussed on this part of the plaintiff's claim. The arguments which have been canvassed have been canvassed on the want of adequate reasons for giving application at a belated stage. In my opinion the reference in this respect is to Note 3 to the aforesaid Rules. There is no question of assigning any reasons for the claim which is within the period of limitation prescribed under Note 2. It is, therefore, a matter of working as to what is the claim which is within the period of one year from the date of application dated 14/2/1970. The claim of H.R.A. from 20/11/1969 to 25/10/1970 is granted and that fact is not in dispute. It can be seen from the order dated 25/1/1972 passed by the Competent Authority, that has been placed at exh. 22 on the record of the suit. The reason for allowing the claim of H.R.A. from 20/11/1969 set out in the order is that the plaintiff had preferred application to the Roads and Buildings Department for obtaining certificate that Government quarter is not available, on 20/11/1969. That application was apparently not after passage of one and half years. It was made after passage of one year and two months, out of which passage of one year could have been excluded. However, neither the grounds stated by the Competent Authority about the working of the period nor the date of the respective applications are reconcilable on the question of delay. It has to be taken that the application dated 14/2/1970 was preferred at a belated period, but even if that date of application is taken into consideration, the plaintiff would be entitled to H.R.A. for a period of one year atleast prior to that date. It is, therefore, clear that on a plain reading of Note 2 to the aforesaid Rule, the plaintiff would be entitled to H.R.A. for a period of 9 months more than that has been sanctioned by the Competent Authority. It has therefore, to be found that to the aforesaid extent the aforesaid Rule with its Note no.2 has been misread. The questions on the hand therefore shall have to be answered accordingly. No other question has been pressed into service by the learned counsel for the appellant and in respect of the questions which have been pressed into

service. I have dealt with the submission of learned AGP that it would be the date of application to R & B Department which could be relevant for deciding standard point of limitation. As stated above if the date of that application is relevant, the plaintiff would be entitled to rent of one year prior to that date, but as in my opinion the date of application to the Head of the Department or Competent Authority would assume importance as submitted by the learned counsel for the appellant, the claim of rent is as aforesaid grantable. The result is that the judgments and decrees (orders) of the learned trial Judge and the learned appellate Judge shall have to be set aside by allowing this appeal to the aforesaid extent. Following order is therefore, passed :-

12. This appeal is partly allowed. The judgments and decrees (orders) passed by the learned trial Judge and the learned appellate Judge are hereby quashed and set aside by holding that the plaintiff partly succeeds for his claim for a period of 9 months and odd from 13/2/1969 to 19/11/1969 and making a round figure he would be entitled to a decree for H.R.A. for a period of 9 months amounting to Rs.460/- with interest at the rate of 9% p.a. from the date of the suit till payment. There shall be no order as to cost all throughout. Order and decree accordingly.

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